UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION

MDL No.1456

Master File No. 01-CV-12257-PBS Subcategory No. 06-CV-11337-PBS

THIS DOCUMENT RELATES TO:

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al. v. Boehringer Ingelheim Corporation, et al., Civil Action No. 07-10248-PBS

Judge Patti B. Saris

Magistrate Judge Marianne B. Bowler

THE ROXANE DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION UNDER THE PUBLIC DISCLOSURE BAR OF THE FALSE CLAIMS ACT

Pursuant to FED. R. CIV. P. 12(b)(1), or in the alternative, FED. R. CIV. P. 12(h)(3), the Roxane Defendants respectfully move this Court for an order dismissing all of Ven-A-Care's claims with prejudice for lack of subject matter jurisdiction under 31 U.S.C. § 3730(e)(4). The grounds for this Motion are set forth in The Roxane Defendants' Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction Under the Public Disclosure Bar of the False Claims Act.

In support of the Motion, the Roxane Defendants submit herewith: (i) The Roxane Defendants' Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction Under the Public Disclosure Bar of the False Claims Act; and (ii) Declaration of John W. Reale in Support of The Roxane Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction. The Roxane Defendants further incorporate by reference certain portions of The Roxane Defendants' Local Rule 56.1 Statement of Undisputed Material Facts in Support of Their Motion for Summary Judgment, filed contemporaneously with the instant Motion, as

indicated in The Roxane Defendants' Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction Under the Public Disclosure Bar of the False Claims Act.

WHEREFORE, the Roxane Defendants respectfully request that the Motion to Dismiss be GRANTED.

Dated: June 26, 2009 Respectfully submitted,

/s/ John W. Reale

Helen E. Witt, P.C. Anne M. Sidrys, P.C. Eric T. Gortner John W. Reale KIRKLAND & ELLIS LLP 300 North LaSalle Street Chicago, IL 60654

Telephone: (312) 862-2000 Facsimile: (312) 862-2200

Counsel for Defendants Boehringer Ingelheim Corp., Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim Roxane, Inc., and Roxane Laboratories, Inc.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on June 26, 2009, a copy to LexisNexis File and Serve for posting and notification to all parties.

/s/ John W. Reale
John W. Reale